

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 8089 of 2014

G.Rajendran

... Petitioner

Versus

1. The District Collector,
District Collector Office,
Erode District,
Erode.

2. The Block Development Officer,
Panchayat Union,
Bhavani Sagar,
Erode District-638 451.

3. The President,
Mudukandurai Panchayat,
Bhavani Sagar Union,
Erode District-638 451.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of order No.22384/2013/PE2, dated 05.10.2013 passed by the 1st respondent and quash the same and consequently to direct the respondents to reinstate the petitioner in service as Panchayat Clerk with effect from 08.07.2002 with arrears of pay and all other consequential benefits.

For Petitioner : Ms.Y.Kavitha

For Respondents : Mr.I.Satish,
Addl. Govt. Pleader for R1
Mr.V.Jayaprakash Narayanan,
for R2 & R3

O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent District Collector dismissing the petitioner's appeal filed against the order of removal from service.

2. The brief facts leading to the filing of this Writ Petition are as follows :-

The petitioner was appointed as a Panchayat Clerk in Mudukanthurai Panchayat, Bhavani Sagar Union, on a part time basis on 01.01.1997. Subsequently, on 27.06.2002, a charge memo was issued to the petitioner by the President of 3rd respondent panchayat herein, leveling as many as 16 charges regarding some misappropriation of funds of the panchayat. For the charges leveled against the petitioner, he has given a reply on 06.07.2002. Thereafter, no enquiry was conducted. However, the 2nd respondent as well as 3rd respondent did not allow the petitioner to discharge his duty, and not permitted him to enter into the panchayat premises. The petitioner has sent various representations to the 3rd respondent requesting to permit the petitioner to discharge his duty as Clerk. Thereafter, on 26.03.2003, the 3rd respondent has informed the petitioner that he was temporarily suspended from service.

3. From the year 2003, the petitioner has sent several representations to the 3rd respondent requesting him to conduct disciplinary proceedings. On 27.01.2007, the 3rd respondent has sent a letter stating that, no decision has been taken on the charges leveled against the petitioner, and the matter is pending with the higher authority. Again on 19.06.2008, the 3rd respondent informed the petitioner that one Mr.S.Arjunan was appointed as a Clerk in his post. Hence, there is no vacancy available in the panchayat. Even thereafter, the petitioner has continuously sent representations till the year 2012. Finally, on 07.09.2012, the 3rd respondent has informed the petitioner that he has been terminated from the post of Panchayat Clerk with effect from 08.07.2002, and a resolution was also passed to that effect by the 3rd respondent panchayat. The copy of resolution was also communicated to the petitioner. Then only, the petitioner came to know that he was terminated from service. Immediately, the petitioner has filed an appeal before the 1st respondent challenging the resolution passed by the 3rd respondent. By the impugned order, the 1st respondent dismissed the appeal on the ground that, it is barred by limitation. The appellate authority has stated that, even though the petitioner was terminated from service with effect from 08.07.2002, the appeal has been filed only in the year 2012 belatedly after lapse of 10 years. The appellate authority has also clearly

stated that, there is no records available with the 3rd respondent panchayat regarding the enquiry conducted on the charge memo, and the order of removal from service. Challenging the above order, the present Writ Petition has been filed.

4. The 2nd respondent Block Development Officer has filed a counter affidavit stating that, the petitioner was appointed as a part time clerk in Mudukkandurai Village Panchayat on 01.01.1997. Since the petitioner has misappropriated the funds of panchayat, charges were framed based on the panchayat audit report, leveling 16 charges against the petitioner, and the charge memo was served on the petitioner on 27.06.2002. Thereafter, after considering the reply submitted by the petitioner, the 3rd respondent Panchayat passed a resolution, No.29/2002-2003 terminating the petitioner from service, which was also duly informed to the petitioner. Thereafter, another person was appointed as a panchayat clerk in his place. It is further stated that the resolution passed by the panchayat was duly informed to the petitioner, and it was also received by him. It is also stated that, no record is available in respect of disciplinary proceedings initiated against the petitioner. Further, the petitioner, being an affected party, and residing in the same village, ought to have challenged the order of termination immediately, but the petitioner has slept over for 10 years. Hence, the petitioner is not entitled for any relief.

5. I have heard and considered the submissions made by the learned counsel appearing for the petitioner as well as the learned counsel appearing for respondents and perused the records carefully.

6. It is an admitted fact that the petitioner was working as Head Clerk in the 3rd respondent Panchayat. A charge memo was issued against him by the 3rd respondent panchayat on 27.06.2002, for which, the petitioner has also submitted a reply on 12.07.2002. Thereafter, no materials available on record to show that the disciplinary proceedings has been conducted against the petitioner. It is now submitted that a resolution was passed on 08.07.2002 by the 3rd respondent terminating the service of petitioner, but no materials available on record to show that the termination order has been communicated to the petitioner. The 1st respondent appellate authority has also clearly stated that none of the records available with the 3rd respondent panchayat. The President of the 3rd respondent Panchayat has also appeared before the appellate authority and stated that, no records are available with the panchayat regarding the conduct of disciplinary proceedings. One and only material available on record is the resolution said to have been passed by the 3rd respondent panchayat on 08.07.2002. However, there is no

material available on record to show that the above said resolution has been communicated to the petitioner.

7. Apart from that, right from the year 2002 till 2012, in all the communications sent to the petitioner, there is no mentioning about the termination of service of the petitioner. Only on 07.09.2012, the petitioner was informed that he was removed from service on 08.07.2002. In the above circumstances, in absence of any materials, it can only presume that pursuant to the charge memo, no enquiry was conducted, and the petitioner was given an opportunity before terminating him from service, and the order was communicated to the petitioner immediately. In the above circumstances, the finding of the 1st respondent that the appeal has been filed belatedly cannot be accepted. Only on receipt of communication from the 3rd respondent dated 07.09.2012, the petitioner filed an appeal. In absence of any materials available on record to show that the petitioner has been removed from service by following due process of law, the order of termination cannot stand in the eye of law, and the impugned order of termination is liable to be set aside.

8. However, considering the fact that now, more than 17 years have been lapsed, another incumbent was also appointed in his place, and the petitioner was only a part time employee, at this stage, the petitioner cannot be reinstated into service with full backwages. However, the petitioner can be appointed as a part time clerk in anyone of the vacancies available in Erode District without continuity of service and without backwages.

9. The learned counsel appearing for the petitioner would submit that, there are two vacancies available in the post of Panchayat Clerk at Getticheviyur Village Panchayat in Nambiyur Panchayat Union, and also at Bommanaickenpalayam Village Panchayat in Gobichettipalayam Panchayat Union, the petitioner can be appointed in anyone of the vacancies. The learned counsel has submitted that the petitioner is willing to join in Getticheviyur Village Panchayat in Nambiyur Panchayat Union.

10. In the result, this Writ Petition stand allowed. The resolution passed by the 3rd respondent vide No.29/2002-2003 is set aside, and the 3rd respondent is directed to appoint the petitioner as Part time clerk at Getticheviyur Village Panchayat, Nambiyur Panchayat Union, within a period of twelve weeks from the date of receipt of the copy of this order. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

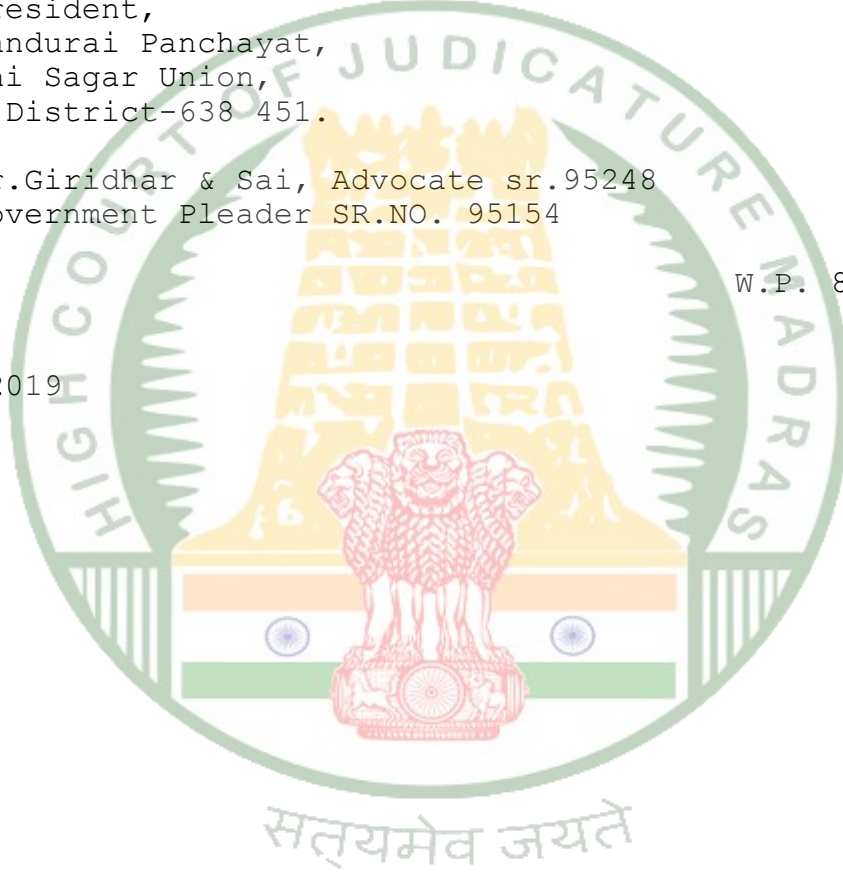
To

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Erode District-638 451.

+lcc to Mr.Giridhar & Sai, Advocate sr.95248
+lcc to Government Pleader SR.NO. 95154

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ssv(co)
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